

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

CHEYENNE RIVER SIOUX TRIBE, Plaintiff, ROSEBUD SIOUX TRIBE, Intervenor-Plaintiff, v. RYAN ZINKE, Secretary, United States Department of Interior, et al., Defendants.	Case: 3:15-cv-03018-KES
--	-------------------------

**DEFENDANTS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

Pursuant to D.S.D. Civ. LR 56.1(A), the following is a statement of material facts as to which Defendants contend there is no genuine issue to be tried:¹

1. In September 2013, the Secretaries of the Interior and Education appointed the American Indian Education Study Group ("Study Group") to diagnose the educational challenges in BIE-funded schools and recommend strategies for reform to ensure that all students attending BIE-funded schools receive a world-class education. CRST-000571 (Draft *Blueprint*); CRST-002441 (2015 Reorganization Tribal Consultation Booklet).²

¹ Defendants submit this statement, even though they respectfully maintain that such a statement should not be necessary for Plaintiffs' consultation arguments, as those are brought under the Administrative Procedure Act and so the Court should therefore "review, not try" the facts found in the Administrative Record, ECF Nos. 40-45. *Bettor Racing, Inc. v. Nat'l Indian Gaming Comm'n*, 47 F. Supp. 3d 912, 918 (D.S.D. 2014), *aff'd*, 812 F.3d 648 (8th Cir. 2016).

² Defendants previously filed the certified administrative record for this action, *see* ECF Nos. 40-45, and cite to that where possible using the record's bates numbering.

2. Before the Study Group developed any proposed reorganization, it visited schools and conducted six listening sessions with tribal leaders, Indian educators, parents, school boards and others across the county. CRST-000540 (Federal Register Notice); CRST-002441 (2015 Reorganization Tribal Consultation Booklet).
3. The Study Group spent several days in South Dakota in the fall of 2013 and met with Cheyenne River Sioux Tribe (“CRST”) and Rosebud Sioux Tribe (“RST”) during this time. CRST-000057-CRST-000071 (Notes from South Dakota listening Sessions).
4. By April 2014, the Study Group met with more than 300 stakeholders from tribes, schools, and individuals, and received nearly 150 email comments, CRST-000577 (draft *Blueprint*).
5. The Study Group prepared a draft report based on the input it had received. CRST-000571 (draft *Blueprint*); CRST-000894:16:22-25 (Loneman School Consultation Transcript).
6. That draft was the subject of four tribal consultation sessions in April and May 2014. CRST-000540-CRST-000541 (Federal Register Notice).
7. The BIE provided notice of the tribal consultations by sending letters to tribal leaders, issuing a Federal Register notice, and providing information on its website. CRST-000542-CRST-000543; CRST-000540-CRST-000541.
8. CRST and RST attended a meeting with Defendants at Loneman Day School in Oglala, South Dakota on April 28, 2014, to discuss the proposed reorganization. CRST Compl. ¶ 41, ECF No. 1; RST Compl. ¶ 34, ECF No. 48-1.

9. BIE solicited written comments and allowed those comments to be submitted more than a month after the consultation session at Loneman. CRST-000542-CRST-000543; CRST-000540-CRST-000541.
10. In June 2014, the Study Group incorporated feedback from these consultations into a final report. CRST-001829, CRST-001830. Yu Dep. 118:1-2, 239:9-13, 268:21-269:10.
11. Based on the Study Group's final report, the Secretary of the Department of Interior issued Secretarial Order 3334 proposing a restructuring of the BIE to improve schools. *See* CRST-001896-CRST-001898.
12. BIE had at least two meetings with the Great Plains Tribal Chairman's Association, an organization of the Great Plains tribal chairmen, Bordeaux Dep. II at 19:18-19, CRST-002132, including one at Watertown, South Dakota in June 2014 where Director Roessel spoke to the group about the reorganization, Farlee Dep. 25:17-19.
13. Before release of the draft reorganization for formal consultation sessions, BIE held twelve regional or individual tribal consultations to gather input for the reorganization proposal. CRST-003517-CRST-003518; CRST-002168-CRST-002189, CRST002352-CRST-002374.
14. At these meetings, BIE presented organizational charts reflecting BIE's structure after the proposed reorganization and answered specific questions with tribal leadership, tribal education departments, tribal staff, and different school representatives. CRST-003518.
15. On February 19, 2015, BIE met individually with CRST in Eagle Butte, South Dakota. CRST-002190 (Sign-in Sheet).
16. On March 26, 2015, BIE met individually with RST in Rosebud, South Dakota. CRST-002394-CRST-002396.

17. At that March 2015 meeting, “[e]verybody had an opportunity to ask a question or make comments.” Bordeaux Dep. II 21:11-12.
18. Then, in April and May 2015, BIE held six national or regional tribal consultations.
CRST-003518.
19. CRST and RST attended one consultation on April 22, 2015 in Rapid City, South Dakota.
CRST-002581-CRST-002584 (Sign-in Sheet).
20. Prior to those consultations, Defendants made the tribal consultation booklet, CRST-002437-CRST-002450, publicly available. CRST Compl. ¶ 60; RST Compl. ¶ 53;
CRST-002435.
21. At the April 22, 2015 consultation, BIE presented information regarding the reorganization, listened to comments, and engaged in discussions with tribal leaders and educators. CRST-002440.
22. BIE also solicited comments on the reorganization and accepted written comments over a one month period, until May 22, 2015. CRST-002450 (Tribal Consultation Booklet);
CRST-003519 (Tribal Consultation Report).
23. The BIE received a submission from CRST dated May 15, 2015, CRST-003477-CRST-003480, to which the agency responded, CRST-003684-CRST-003687.
24. CRST participated in a discussion with BIE regarding the reorganization at the Tribal Interior Budget Council. CRST-003208-CRST-003209 (May 2015 Meeting Notes).
25. BIE authored and made publicly available a Tribal Consultation Report, CRST-003515-CRST-003636, which summarized comments received during the 2015 national tribal consultations and the written comments process, and BIE’s responses, CRST-003808, CRST-003519.

26. The idea to realign the Associate Deputy Director (“ADD”) positions by function came from the Dakotas. CRST-001133:255:15-19 (Loneman Consultation Transcript).
27. After the February 2015 meeting between BIE and CRST, BIE added a new Education Program Administrator position in the Dakotas in response to CRST’s request for oversight closer to BIE-operated schools. CRST-002460:24:11-13, CRST-002501:187:6-23, CRST-002502:192:24-193:11 (Rapid City Consultation Transcript); *compare* CRST-002186 (February 2015 presentation to CRST did not include position in organization chart), *with* CRST-002575 (April 2015 presentation that did include position).
28. After the April 22, 2015 consultation in Rapid City, BIE changed the location of proposed Education Resource Center from Rapid City to Kyle in response to concerns expressed. *See* CRST-003517 (Tribal Consultation Report); *compare* CRST-002571 (April 22, 2015 presentation that included Education Resource Center (ERC) in Rapid City), *with* CRST-003815 (Interior letter to Congress requesting approval for reprogramming proposing ERC in Kyle).
29. BIE never received a plan from RST after informing RST that it would welcome a plan for the Great Sioux Nation to have its own ADD. CRST-003524 (Tribal Consultation Report).
30. BIE held monthly stakeholder calls “to improve communication and create an ongoing dialog among staff, school administrations, tribal leaders, school boards, parents, tribal organizations and other interested parties about the restructuring of BIE.” CRST-002403 (Notice of Stakeholder Call).

31. BIE hosted multiple webinars that were open to the public to help explain the proposed reorganization to tribes and tribal members and answer any questions. *E.g.*, CRST-003855-CRST-003870, CRST-003881-CRST-003908.
32. CRST's Director of CRST's Tribal Education Department participated in or otherwise reviewed at least three BIE webinars: a webinar dated August 19, 2014, Farlee Dep. 34:23, CRST-001969; a webinar dated April 29, 2015, CRST-002877-2896, Farlee Dep. 48:25-49:7, and a webinar dated October 9, 2015, CRST-003881-CRST-003908, Farlee Dep. 59:8-10.
33. Mr. Yu spoke "once a month on . . . average," with Deborah Bordeaux, RST's Grant Manager, and "encouraged" Ms. Bordeaux "to not hesitate to contact him" with any questions. Bordeaux II Dep. 56:25-57:17; *see also id.* at 59:2-24.
34. The Greenbook, which contains BIE's budget justification, as well as explanatory changes for that fiscal year's funding, was made publicly available on the Interior's Indian Affairs website, Dearman Decl. ¶ 3, ECF No. 91.
35. CRST and RST have consistently received technical assistance. Dearman Decl. ¶¶ 14-15.
36. BIE allocated to Bureau funded elementary and secondary schools on the Cheyenne River Reservation the following sums for the following school years: \$15,263,387 (2013/2014); \$16,799,513 (2014/2015); \$16,721,180 (2015/2016); \$17,364,850 (2016/2017). Dearman Decl. ¶ 9.
37. BIE allocated to the Bureau funded elementary and secondary school and peripheral dormitory on the Rosebud Reservation the following sums for the following school years: \$10,657,523 (2013/2014); \$12,093,046 (2014/2015); \$13,386,654 (2015/2016); \$14,175,113 (2016/2017). Dearman Decl. ¶ 9.

38. BIE had authority from Congress to award sovereignty grants. Roessel Dep. 68:8-14.
39. On the Rosebud Sioux Reservation, one tribally controlled school, the St. Francis Indian School, and one tribally controlled peripheral dormitory, the Rosebud Dormitory, operate pursuant to a Pub.L. 100-297 grant agreement. Dearman Decl. ¶ 8.
40. On the Cheyenne River Sioux Reservation, two tribally controlled schools, Takini and Tiospaye Topa, operate pursuant to a Pub.L. 100-297 grant agreement. Dearman Decl. ¶ 7.
41. BIE continues to directly operate the Cheyenne Eagle Butte School on the Cheyenne River Sioux Reservation. Dearman Decl. ¶ 7.
42. BIE waited to staff the proposed Education Resource Centers until it received approval from the Congressional Appropriations Committees. Roessel Dep. 239:10-13.
43. Congressional approval of the reprogramming request carried a condition “[t]hat every effort be made not to proceed with components of the reorganization at the field office level that may be directly impacted by pending litigation.” CRST-004116 (House Committee Approval)
44. BIE has not staffed the proposed ERCs in the Dakotas because of this pending litigation. CRST-004116 (House Committee Approval); Roessel Dep. 239:10-13; Dearman Decl. ¶ 14.

Dated: March 19, 2018

Respectfully submitted,

CHAD. A. READLER
Acting Assistant Attorney General

RONALD A. PARSONS, JR.
United States Attorney

CHERYL SCHREMPP DUPRIS
Assistant United States Attorney

United States Attorney's Office
325 S. 1st Street, Suite 300
Sioux Falls, S.D. 57104
Telephone: (605) 357-2340

ERIC WOMACK
Assistant Branch Director

/s/Kevin M. Snell
DANIEL BENSING
Senior Trial Counsel
KEVIN M. SNELL
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue N.W. Room 6108
Washington, D.C. 20530
Tel.: (202) 305-0924
Fax: (202) 616-8470
E-mail: Kevin.Snell@usdoj.gov

Attorneys for Defendants